

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

MICHAEL KEITH

PETITIONER

v.

No. 2:12-cv-180-DPM-BD

**T.C. OUTLAW, Warden,
Federal Correctional Complex,
Forrest City, Arkansas**

RESPONDENT

ORDER

Keith has objected to Magistrate Judge Beth Deere's recommendation, No 14, that the Court dismiss his petition for a writ of habeas corpus as an abuse of the writ. On *de novo* review, FED. R. CIV. P. 72(b)(3), the Court adopts Judge Deere's recommendation in substance, with a brief supplement to respond to Keith's objection.

Keith's clarified claim is that, pursuant to policy, Florida authorities denied him "gain time" credit for the part of his state sentence he spent on a writ for prosecution by federal authorities. This claim is still an abuse of the writ now. It overlaps with the claim made in his first habeas petition; and it could have been made then. If the Court is wrong about this procedural bar, the Court would deny Keith's petition on the merits because he has not made

out a constitutional violation. "The State is entitled . . . within reasonable and constitutional limits, [to] control the contours of the liberty interest it creates[,]" such as "gain time" credit against a sentence. *Waddell v. Department of Correction*, 680 F.3d 384, 389 (4th Cir. 2012) (quotation omitted). Keith's petition is dismissed with prejudice. No certificate of appealability will issue.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

21 June 2013